

## SB 260- As Amended

SENATE TAXATION  
EXHIBIT NO. 5  
DATE 3.17.09  
BILL NO. SB 260

**Section 1- Defines and taxes the recapture of depreciation and depletion when a nonresident sells their interest in a publicly traded partnership (PTP).**

Uses the amount of depreciation and depletion reported to the federal government (Section 751 deductions) as the basis for determining Montana source income.

The amount of tax due would be calculated in the following manner:

Amount of Federal Section 751 (Provided for on K-1)		\$ Recaptured Gain
Current Year Apportionment Factor	X	<u>Apportionment %</u>
Montana Source Depreciation and Depletion		Taxable Gain

This formula is the most accurate way to recapture and tax any depreciation, depletion or other deductions taken during the ownership of a partnership interest.

**Section 2- Amends the existing requirements that partnerships file a composite return and withhold tax from distributions to nonresident partners to address the inability of PTPs to comply.**

PTPs are unable to comply with the existing requirements for a number of reasons including:

- Most units are held by brokers in "street name," so PTPs do not know the identity or state of residence of partners
- Distributions are quarterly; PTPs receive list of unit owners from brokers for tax reporting only once a year, and public trading means that owners change continuously
- PTPs must treat all partners equally to maintain public trading of units

The bill exempts PTPs from the requirement to file a composite return and withhold on nonresident partners. In return, PTPs will provide the Department of Revenue with the name, address, and tax ID number of any person or entity that has Montana source income above \$500, or who has sold their interest in the publicly traded partnership during the year:

The information will be provided in an electronic format that can be sorted and exported.

The bill also clarifies that the exemption from filing a composite return does not relieve any taxpayer from filing and paying Montana income tax.

The composite return and withholding provision included in the bill is consistent with model legislation adopted by the Multistate Tax Commission and enacted by 30 states throughout the nation as a fair and reasonable way to address the issues faced by PTPs.